

Item SPR06-25 Response Form

Title: Criminal Cases: Sentencing Rules for Hate Crime Cases (amend rule 4.421; adopt rules 4.330 and 4.427 of the California Rules of Court)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Title	Criminal Cases: Sentencing Rules for Hate Crime Cases (amend rule 4.421 and adopt rules 4.330 and 4.427 of the California Rules of Court)
Summary	The proposed new rules and the amendment to existing sentencing rules state the criteria for courts to consider in hate crime sentencing.
Source	Criminal Law Advisory Committee
Staff	Joshua Weinstein, 415-865-7688, joshua.weinstein@jud.ca.gov
Discussion	<p>Penal Code section 422.86, enacted effective January 1, 2005, provides that the Judicial Council is to “develop a rule of court guiding hate crime sentencing.” (Pen. Code, § 422.86(b).) The purpose of the rule is not to create new law, but to implement the legislative goals in hate crime sentencing; those goals are (1) punishment, (2) crime and violence prevention, and (3) restorative justice for the immediate victims and the “classes of persons terrorized by the hate crimes.” (<i>Ibid.</i>)</p> <p>To that end, the Criminal Law Advisory Committee proposes amendments to rule 4.421 and adoption of new rules 4.330 and 4.427. Rule 4.421 would be amended to include the commission of the hate crime as an aggravating factor for a felony sentence, except in circumstances where the substantive crime is a hate crime under Penal Code section 422.7 or the sentence is enhanced because it is a hate crime.</p> <p>Proposed rule 4.427 states all the various sentencing options for felony hate crime violations. The rule is to assist judges in sentencing (1) substantive felony hate crimes (Pen. Code, § 422.7), (2) felony convictions subject to a hate crime enhancement (Pen. Code, § 422.75), and (3) felony convictions subject to hate crime sentencing other than substantive hate crimes. (Pen. Code, § 422.55.) The proposed rule guides the court in sentencing in those three circumstances:</p> <ul style="list-style-type: none"> • For substantive felony hate crimes, the rule provides that the punishment is imprisonment in state prison as provided by Penal Code section 422.7. (Proposed rule 4.427(b).) • For hate crime enhancements, the rule provides when the enhancement is to be imposed and the appropriate additional

terms. (Proposed rule 4.427(c).

- For other felony convictions, the rule clarifies when a hate crime may be used as an aggravating factor. (Proposed rule 4.427(d).)

The proposed rule also provides guidance by stating the legislatively articulated goals in felony hate crime sentencing. (Proposed rule 4.427(e).)

Proposed rule 4.330 applies in misdemeanor cases where either (1) the conviction is for a substantive hate crime, or (2) the facts of the crime constitute a hate crime. In those circumstances, the rule refers the sentencing judge to the considerations stated in subdivision (e) of proposed rule 4.427.

The text of the proposed new rules and amendments is attached.

Attachment

Rule 4.421 of the California Rules of Court would be amended and rules 4.330 and 4.427 would be adopted, effective January 1, 2007, to read:

Rule 4.330. Misdemeanor hate crimes

(a) **[Application]** This rule applies to misdemeanor cases where the defendant is convicted of either (1) a substantive hate crime under section 422.7 or (2) a misdemeanor violation and the facts of the crime constitute a hate crime under section 422.55.

(b) **[Sentencing consideration]** In sentencing a defendant under (a), the court must consider the goals for hate crime sentencing stated in rule 4.427(e).

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include:

(a) Facts relating to the crime, whether or not charged or chargeable as enhancements, including the fact that:

(1) – (11) * * *

(12) The crime constitutes a hate crime under section 422.55 and:

(A) The crime is not charged as a substantive hate crime under section 422.7;

(B) No hate crime enhancements under section 422.75 are imposed; and

(C) The crime is not subject to sentencing under section 1170.8.

(b) * * *

Rule 4.427. Hate crimes

(a) **[Application]** This rule is intended to assist judges in sentencing in felony hate crime cases. It applies to:

(1) Convictions of felony violations of section 422.7 for substantive hate crimes;

(2) Convictions of felonies with a hate crime enhancement under section 422.75; and

- 1
2 (3) Convictions of felonies other than for violations of section 422.7 that
3 nonetheless qualify as hate crimes under section 422.55.
4
- 5 **(b) [Substantive hate crime]** A conviction of a felony violation of a substantive
6 hate crime is punishable under section 422.7 by imprisonment in state prison
7 as provided by statute.
8
- 9 **(c) [Hate crime enhancement]** If a hate crime enhancement is pled and proved,
10 the punishment for a felony conviction must be enhanced under section 422.75
11 unless the underlying felony conviction is for a substantive hate crime
12 conviction under section 422.7.
13
- 14 (1) The following enhancements apply:
15
- 16 (A) An enhancement of a term in state prison as provided in section
17 422.75(a). Personal use of a firearm in the commission of the
18 offense is an aggravating factor that must be considered in
19 determining the enhancement term.
20
- 21 (B) An additional enhancement of one year in state prison for each prior
22 felony conviction that constitutes a hate crime as defined in section
23 422.55.
24
- 25 (2) The court may strike enhancements under (c) if it finds mitigating
26 circumstances under rule 4.423 and states those mitigating circumstances
27 on the record.
28
- 29 (3) The punishment for any enhancement under (c) is in addition to any other
30 punishment provided by law.
31
- 32 **(d) [Hate crime as aggravating factor]** If the defendant is convicted of a felony,
33 and the facts of the crime constitute a hate crime under section 422.55, that fact
34 must be considered a circumstance in aggravation in determining the
35 appropriate punishment under rule 4.421 unless:
36
- 37 (1) The defendant is convicted of a substantive hate crime under section
38 422.7;
39
- 40 (2) The court imposed a hate crime enhancement under section 422.75; or
41
- 42 (3) The defendant has been convicted of an offense subject to sentencing
43 under section 1170.8.

1
2 **(e) [Hate crime sentencing goals]** When sentencing a defendant under this rule,
3 the judge must consider the principal goals for hate crime sentencing.
4

5 (1) The principal goals for hate crime sentencing, as stated in section 422.86,
6 are:
7

8 (A) Punishment for the hate crime committed;
9

10 (B) Crime and violence prevention, including prevention of recidivism
11 and prevention of crimes and violence in prisons and jails; and
12

13 (C) Restorative justice for the immediate victims of the hate crimes and
14 for the classes of persons terrorized by the hate crimes.
15

16 (2) Crime and violence prevention considerations should include educational
17 or other appropriate programs available in the community, jail, prison,
18 and juvenile detention facilities. The programs should address sensitivity
19 or similar training or counseling intended to reduce violent and antisocial
20 behavior based on one or more of the following actual or perceived
21 characters of the victim:
22

23 (A) Disability;
24

25 (B) Gender;
26

27 (C) Nationality;
28

29 (D) Race or ethnicity;
30

31 (E) Religion;
32

33 (F) Sexual orientation; or
34

35 (G) Association with a person or group with one or more of these actual
36 or perceived characteristics.
37

38 (3) Restorative justice considerations should include community service and
39 other programs focused on hate crime prevention or diversity sensitivity.
40 Additionally, the court should consider ordering payment or other
41 compensation to programs that provide services to violent crime victims
42 and reimbursement to the victim for reasonable costs of counseling and

1 other reasonable expenses that the court finds are a direct result of the
2 defendant's actions.

3
4 Advisory Committee Comment

5
6 Multiple enhancements for prior convictions under (c)(1)(B) may be imposed if the prior
7 convictions have been brought and tried separately. (Pen. Code, § 422.75(d).)